

Lawyer fees in real estate transactions

Question: Must a lawyer's fees in a real estate closing, which fees would be one of the disbursements from the closing proceeds, be held in trust for five business days, as required by the *Marine* Rule, SCR 20:1.15(g)?

Answer: No, provided that the fees have been earned at the time of the closing, they should not be deposited into the trust account. Fees that have been earned belong to the lawyer, and under SCR 20:1.15(b)(3), funds belonging to the lawyer may not be deposited in the trust account.

In addition, under the circumstances described in SCR 20:1.15(e)(5)b., a lawyer may disburse the proceeds of a real estate transaction from funds that have been received but have not yet cleared. This provision for real estate transactions allows a disbursement to the lawyer from closing proceeds to be treated as other closing disbursements, and OLR would consider the disbursement of such fees at the time of the closing as allowable, under the real estate exception.

However, any fees that have been advanced prior to the real estate closing and deposited in the trust account prior to the closing, would be subject to the notification and disbursement requirements of the *Marine* rule, SCR 20:1.15(g).